

MCPC – February 10, 2009

The Madison County Plan Commission on the above date at 9:00 A.M. with Bill Maxwell, President, presiding.

Members Present: Bill Maxwell, Paul Wilson, Phil Isom, Larry Crenshaw, John Orick, John Simmermon, Patrick Manship, Mark Gary and Wesley Likens.

Members Absent: None

Also Present: Cory Wilson, Executive Director, Gerald Shine, Jr., Attorney, and Beverly Guignet, Secretary.

Current Business

1. Roll call was taken and all members were present.

2. Member Wilson made a motion, seconded by Member Crenshaw to table the December, 2008 minutes until the next meeting. The vote was unanimous in favor of the motion.

The minutes of the January, 2009 meeting were distributed to each member. Member Gary made a motion, seconded by Member Simmermon to approve the minutes. The vote was unanimous in favor of the motion.

4. Wind Energy Conversion Ordinance – Vote

Director Wilson stated the Board had discussed the Wind Energy Ordinance several times over the past few meetings. A public hearing was held in November and if there aren't any additions or questions, I recommend sending a favorable recommendation to the Board of Commissioner for their March meeting.

For general information the public hearing was held November 18, 2008. The ordinance will only apply to agricultural and industrial zoned property and will not affect residentially zoned properties. We want to at least have an ordinance on the book in order to be prepared if a wind farm comes to Madison County. We now know E.ON Climate and Renewable has been looking at Madison County as a potential site for a farm. We want to make sure that all our residents are protected and that the property values not be adversely affected.

There is a two year period where a test tower will be placed to check wind speeds. Winds speeds need to be at least 11 mph at a height of 150 feet.

John Richwine County Commissioner stated that this ordinance is designed to protect the residents of the area.

Scott Poore, 8940 W 1700N, Elwood, IN.

Mr. Poore was concerned that he did not get any notification for this hearing.

Mr. Poore was informed that notification was not required for today's meeting. The meeting in November only required notification in the newspaper. Property notification was given for that hearing.

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Chad Kelich, 7468 W 1400N, Elwood. Phone – 552-0814.

Mr. Kelich told the board his concerns were the same as Mr. Poore.

Member Wilson stated the design of this ordinance was not to attract or detract windmills. The idea of this ordinance is to regulate. The purpose of this ordinance is to set up a base of regulations that if they come to our county, we would be prepared.

Whatever company that would come in here would have to make their case just like anyone else. But by having the ordinance in place we feel we are protecting the people of Madison County much better.

Director Wilson told the board a permit was issued last week for a **meteorological** tower. The tower is not a windmill. It is for the propose of testing the wind speed. It will be 200 feet tall and have three anemometers points to test the wind speed. The testing will last approximately two years. If this is successful they will then apply for a Special Exception to Planning Commission. At that time notification would be required. Notification will have to be placed in both the Anderson and Elwood papers, in addition a placard will be placed on site. If any type of variances would be needed they would have to go before the Board of Zoning Appeals. Final approval would be granted by the Board of County Commissioners.

David Johnston, 8729 W 1700N. Phone – 765-552-2164.

Mr. Johnston wondered what plan? E.ON Company has to protect not only the agricultural landowners but the property owners that live near and would have to put up with this nuisance. I have taken videos and pictures. They produce a lot of noise which would be a big nuisance to the people in the area. I am not really against this but I don't want it in my backyard. He also questioned notification requirement.

Director Wilson stated proper legal notices were published in both papers. This will be heard at the Commissioner meeting in March and will be open to the public again for their input. Also, concerning the noise, former County Surveyor, Brad Newman and I visited Fowler Ridge Wind farm in Benton County and the sound was minimal. These will not be located in residential areas as they need open space.

Grant County, Hamilton County and Tipton County have all had contact with me for copies of the draft that we have prepared. Our ordinance appears to be a template for other counties. As ours was developed from Benton County's we anticipate making changes to this as we begin applying the ordinance.

Joe and Amanda Keeper, 400N. Phone – 552-7906.

Mr. Keeper told the board they have been to Benton County to see the windmills and did not hear any offensive noise. We wanted the Board to know we look at this as an improvement and some day we are going to need the energy.

Member Wilson asked, in the ordinance there is part in there that has to do with assured finances, it deals with the company paying for the decommissioning of the towers to make sure there is protection in there. I feel that is a little vague and needs to be more concrete.

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Director Wilson replied he would look in to that issue.

Commissioner Richwine stated one of his primary concerns was dealing with roads. Page 14, Section 2. I think we need to have a section in there that states that those things need to be agreed upon at the time of assessments. Whether it's some type of road fee or agreement that whatever the engineer says the company will comply with or will at least return to what it was before.

Member Manship made a motion to forward this to the County Commissioners with a favorable recommendation.

Member Simmermon seconded the motion.

The vote was unanimous in favor of the motion. **The Wind Energy Conversion Ordinance will be forwarded to the County Commissioners with a favorable recommendation.**

The people in the audience were informed this would go before the County Commissioners at their March 17 meeting at 10 A.M.

5. Final Draft of Proposed Fee Schedule

Director Wilson passed a copy of the final draft for the fee schedule and stated this was for the Board to look over and there will be a public hearing at our meeting in March. If the Board has any changes or suggestions please contact the office as soon as possible so they can be presented at the next meeting.

6. Training

Director Wilson stated just to refresh the Board and to inform the new members he would read the following:

Petition to Rezone

Petitions to rezone seek to change the zoning map rather than the text of the zoning ordinance. The Plan Commission hears all petitions for rezone and then forwards either a favorable or unfavorable recommendation to the Board of Commissioners (IC 36-7-4-602b). The amendment of the zoning map is a matter committed to the sound legislative discretion of the Board of Commissioners and the decision is not controlled by any one standard. In considering such a petition, due consideration should be given to:

1. The Comprehensive Plan
2. The current structures and uses in each zoning district
3. The most desirable use for which the land in each district is adapted
4. The conservation of property values throughout the County
5. Responsible and reasonable development and growth.

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In considering these five (5) factors, the Plan Commission should explore the following:

1. Comprehensive Plan's vision of the use of the property
2. The affect the proposed change would have on surrounding properties
3. The highest and best use of the property'
4. Whether the developer/petitioner/property owner is willing to commit to architectural standards, amenities, landscaping, etc. **which will make the development exceed the minimum standards** contained in the Zoning Ordinance.
5. Special or unique characteristics of the land exist (trees, topography, etc.) which can be preserved
6. Impact on roads, schools, utilities, police and fire protection, taxes, etc.

Because the grant of a map amendment is discretionary, the Plan Commission has the right under state statute to require an owner seeking an amendment to make written commitments concerning the use or development of the property. The commitments are then recorded with the County Recorder if the petition for rezone is granted.

These commitments then become binding upon all future owners of the property.

Courts have upheld commitments as an important tool for municipalities to balance the needs of developers with the needs (fiscal & otherwise) of the community. These commitments usually address issues of enhanced architectural standards, landscaping, buffering, traffic control/management, prohibited uses, open space, amenities, etc.

In Indiana, municipalities cannot charge or impose impact fees upon developers to help defray or mitigate the capital costs of infrastructure associated with the development unless the municipality adopts an impact fee ordinance. Because of various reasons, including costs associated with the administration of such fees, few municipalities have enacted such ordinances.

Planned Unit Development Reviews

For Development or redevelopment that contains special and/or unique characteristics. This includes wooded and wetland areas, hilly terrain, new urbanism concepts, etc. The process is designed to promote the safe and efficient use of land, protect property values and ensure orderly and harmonious development patterns in accordance with the Comprehensive Plan. The PUD must satisfy all standards of the Subdivision Control Ordinance and the Zoning Code.

The Plan Commission may impose supplementary conditions on the approval of the development plan in order to achieve the purposes and objectives of the Zoning Ordinance. The Plan Commission may also require written commitments associated with the PUD and have them incorporated into the development plan. The Plan Commission has the right to require additional information or studies (traffic, noise, light, etc) to be conducted by the developer in order to make a sound decision on the plan and its impacts on the community and how it adheres to the Comprehensive Plan.

If a developer requests a waiver requirement of the Zoning Code or the Subdivision Control Ordinance, the Plan Commission may grant a waiver where the strict application of the ordinances would lead to unjust results and where the purposes intent of the Zoning Code would be better served by an alternative proposal. These waivers are primarily intended to provide alternative landscaping and/or street designs.

Preliminary Plat Approval

Before any land is subdivided, the Subdivision Control Ordinance requires that the land be platted. The preliminary plat contains the developer's plans for general layout of streets, drainage and sanitary sewer improvements, fire protection improvements, utility connections and other information as required by the Subdivision Control Ordinance.

The preliminary plat is considered by the Plat Committee at a public hearing. When a plat is presented to the Plat Committee for preliminary approval, the sole question before the Committee is whether the plat complies with the Zoning Ordinance, Subdivision Control Ordinance, and other laws and ordinances. Indiana courts have long held that the Plat Committee's role at this stage is merely ministerial. It has no discretion to deny the requested approval if the plat is in compliance and it may not consider other factors in making its decision. If the Plat Committee votes to deny the plat, it must make specific findings that articulate which provisions of the zoning ordinance or subdivision control ordinance are violated.

It is inappropriate to request a developer or a land owner to make commitments at this stage of the process. However, in granting approval, the Plat Committee may condition approval upon:

1. Manner and/or timing of street improvements
2. Provision of utility services
3. Minimum lot size, number of lots and/or lot location requirements;
4. Provision of drainage design; and
5. Provision of other services

The preliminary plat approval is effective for two (2) years. By the expiration of two (2) years, the final plat must be approved. Failure to obtain final approval renders the preliminary plat void.

Final Plat Approval

When all improvements have been constructed and conditions have been met, the property owner/developer seeks Final Plat Approval. The final plat is more detailed than the preliminary plat and it shows the permanent lot location, sizes, etc. once the Planning Director, County Engineer and Surveyor are satisfied that the plat complies with the County's Ordinance. This is not a public hearing and no notices are mailed to the surrounding property owners. If the plat is found to be in substantial conformity with the preliminary plat and any conditions, the Plat Committee must approve the plat.

This is just a general jest of what the duties of this board does and how things are done. For the 2010 budget I have already planned on putting some money aside to begin the review process of the Comprehensive Plan. About every five years I think the goals and objectives should be gone over on the Comprehensive Plan in order to update it.

Miscellaneous – Nothing was presented.

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Member Orick made a motion, seconded by Member Manship to adjourn. The vote was unanimous in favor of the motion.

Adjournment: 11:00:11 A.M.

Bill Maxwell, President

Beverly Guignet, Secretary